Summary Versus Indictable Offences

Idea In Short

If you have been charged in Canada, find out as early as possible whether the Crown will proceed summarily or by indictment. That election decides your court, the maximum sentence, whether you can have a jury and how long the conviction follows you. Most charges, including assault, impaired driving and theft under $5,000, are hybrid, so the Crown chooses the tier, often within weeks of the charge and before you have done more than attend a first appearance. Summary offences carry a default maximum of two years less a day and a $5,000 fine, and a judge alone hears them. Indictable offences carry maximums from two years to life. Speak to a criminal defence lawyer before the election is made.

Canada does not use the words felony and misdemeanour. Every criminal charge in the country is one of three kinds: a summary conviction offence, an indictable offence or a hybrid offence that the Crown can prosecute either way. Summary offences are the less serious tier, tried quickly by a judge alone, with a default maximum of two years less a day in jail and a $5,000 fine. Indictable offences are the serious tier, with maximum sentences that run from two years to life, the right to a jury for most of them, and no time limit on when a charge can be laid. Most offences people are actually charged with are hybrid, which means the Crown decides which tier applies, and that decision shapes everything that follows.

If you read court coverage or have been charged yourself, here is what the labels mean in practice.

What is a summary conviction offence?

A summary conviction offence is the Criminal Code's lower tier. It is tried in the provincial court, which in Alberta is the Alberta Court of Justice, by a judge sitting alone. There is no jury, no preliminary inquiry and no election. Unless a section sets its own penalty, the general rule in section 787 of the Criminal Code applies: a fine of not more than $5,000,

imprisonment of not more than two years less a day, or both. Before 2019 the default jail maximum was six months. Parliament raised it so that summary offences could carry meaningful sentences without being pushed into the indictable stream.

The change came through Bill C-75, which received royal assent in June 2019, left the $5,000 fine unchanged and standardized other summary maximums to two years less a day.1 The same bill hybridized most indictable offences punishable by a maximum of 10 years or less, which explains why so many charges now sit in the hybrid category. The "less a day" wording matters because a sentence of two years or more is served in a federal penitentiary, while a shorter sentence stays in a provincial jail.

Summary proceedings also have a clock. Under section 786(2), the charge must be laid within 12 months of the date the offence occurred, unless the accused and the prosecutor agree otherwise. Bill C-75 doubled that period from six months. Miss that window and the Crown's only option, if the offence is hybrid, is to proceed by indictment.

Pure summary offences are relatively rare in the Code. Causing a disturbance, trespassing at night and some driving related offences are examples. Most of what fills a docket is hybrid.

What is an indictable offence?

An indictable offence is the serious tier. Maximum sentences are set offence by offence and range from two years for some property offences to 10 years for theft over $5,000, 14 years for aggravated assault and life for murder, manslaughter and several others. There is no limitation period: an indictable charge can be laid decades after the event, which is why historical sexual assault prosecutions are possible.

The accused has rights in the indictable stream that do not exist for summary matters. For most indictable offences, you choose where you are tried: by a judge of the Alberta Court of Justice, by a judge of the Court of King's Bench sitting alone or by a judge and jury in the Court of King's Bench. Where the maximum sentence is 14 years or more, you can also ask for a preliminary inquiry, a hearing at which the Crown must show there is enough evidence to justify a trial. Bill C-75 narrowed that right: the original bill would have kept preliminary inquiries only for offences punishable by life imprisonment, and the final act set the threshold at 14 years, so a charge such as theft over $5,000, with its 10-year maximum, no

longer qualifies. Two groups of offences are exceptions to the election. The most serious, such as murder, must be tried in the Court of King's Bench. A short list in section 553, including theft and fraud under $5,000 and some mischief offences, is within the absolute jurisdiction of the provincial court, so there is no election.

An indictable conviction also carries heavier collateral weight. Fingerprints and photographs are taken on arrest. The waiting period for a record suspension is 10 years rather than five, and the Parole Board of Canada starts counting only after you have completed all of your sentences.2 If the court cannot confirm the method of trial, the longest waiting period applies. For anyone who is not a Canadian citizen, an indictable conviction can lead to removal from the country.

The Immigration and Refugee Protection Act sets the threshold. Serious criminality covers a conviction in Canada for a federal offence with a maximum sentence of at least 10 years, or one that results in a prison term of more than six months. The Act also treats an offence that can be prosecuted either way as indictable even when the Crown proceeds summarily, so a permanent resident cannot assume that a summary election removes the immigration risk.

What is a hybrid offence, and who decides?

A hybrid offence, sometimes called a dual procedure offence, is one that the Code says can be prosecuted either by indictment or by summary conviction. Assault, impaired driving, theft under $5,000, uttering threats, sexual assault and most drug possession charges are all hybrid. The Crown prosecutor chooses, and the choice is called the election.

The Crown weighs the seriousness of the facts, the accused's record, the harm to the victim, whether the 12 month summary limitation has passed and the sentence the Crown intends to seek. Proceeding summarily keeps the case in provincial court and caps the sentence at two years less a day. Proceeding by indictment opens the higher maximum and triggers the accused's right to elect a jury. Until the Crown elects, a hybrid offence is treated as indictable, which is why police take fingerprints for a hybrid charge even when the Crown later proceeds summarily.

That rule comes from section 34(1)(a) of the Interpretation Act, and the Supreme Court of Canada applied it in R v Dudley (2009 SCC 58): hybrid offences are treated as indictable unless the Crown elects, or is deemed to have elected, to proceed summarily. When a

hybrid case goes to trial in a summary conviction court without an express election, the Crown is deemed to have elected summarily.

The Public Prosecution Service of Canada [PPSC], which prosecutes federal offences such as drug charges, publishes guidance for its prosecutors. It says Crown counsel should generally elect before the accused is asked to plead, and it lists further factors: whether summary conviction sentences could adequately serve the purposes of sentencing, whether the offence is prevalent in the community, whether the accused is alleged to belong to a criminal organization and whether a jury trial is in the public interest.3 Provincial Crown offices apply their own policies, so the list shows the kind of considerations in play, not a checklist for Alberta.

The election is not always final. A Crown that elected to proceed by indictment can later re-elect to proceed summarily, and the PPSC guidance says it normally may do so without the accused's consent unless the preliminary inquiry or trial has begun. That happens when a case turns out to be less serious than it looked on the police report.

Why does the distinction matter to you?

It decides four things at once: which court you are in, what the maximum sentence is, whether you can have a jury and how the conviction follows you afterward. The same assault, with the same facts, can be a summary matter that ends in probation or an indictable matter that ends in a federal penitentiary sentence, depending on how the Crown elects and how the case is presented before that election is made. British Columbia's justice ministry describes the same mechanism: Crown counsel decides what offences you will be charged with, and for a hybrid offence the Crown election determines the maximum penalty.4

That last point is where early advice earns its keep. The Crown's election is often made in the first few weeks after a charge is laid, before the accused has done anything but attend a first appearance. Criminal defence lawyers in Edmonton who deal with the local Crown office regularly know what information influences that choice and can put it in front of the prosecutor while the decision is still open.

Liberty Law LLP is a criminal defence firm with offices in Edmonton, Grande Prairie and Fort McMurray, Alberta. How a charge is classified and prosecuted depends on the facts of each

case.

- 1Legislative summary of Bill C-75
- 2Who is eligible for a record suspension?
- 3Elections and re-elections
- 4Types of offences

Summary

If you have been charged and do not know which stream the Crown will choose, that is itself the question to ask a lawyer. The answer determines what you are facing. Canada sorts every charge into a summary conviction offence, an indictable offence or a hybrid offence, and the hybrid category covers most charges people actually face. The tier sets the court, the maximum sentence, whether you can have a jury and how long the conviction follows you. The Crown often makes its election within weeks of the charge, so early advice can put the right information in front of the prosecutor while the decision is still open.